

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ISAAC WEST,

Plaintiff,

V.

TIGERCAT INDUSTRIES, INC., et al.,

Defendants.

CASE NO. C21-5440 BHS

ORDER GRANTING IN PART
DEFENDANTS' MOTION TO
CONTINUE AND FOR
PROTECTIVE ORDER

This matter comes before the Court on Defendants' motion to continue and for a protective order. Dkt. 113.

Plaintiff Isaac West alleges that a defective Tigercat LX830D Feller Buncher severed his arm in October 2020 and brings claims against the corporations who designed, assembled, manufactured, distributed, and/or sold the Feller Buncher. *See* Dkt. 1. Specifically, West alleges that when he opened the hood of the Feller Buncher to reach the main hydraulic system’s pressure relief valve, the hood suddenly closed on his arm, breaking his arm. *Id.* ¶¶ 5.9–5.10. He alleges that the hood assembly closed due to a sudden loss of hydraulic pressure and “due to a lack of a fail-safe system to prevent the Feller Buncher hood from snapping closed when the hood’s hydraulic cylinders

1 experienced a sudden pressure loss or the hydraulic system's check valve failed, resulting
 2 in a sudden pressure loss." *Id.* ¶ 5.11. West had to self-amputate his arm to avoid
 3 bleeding to death. *Id.* ¶ 5.14.

4 On March 10, 2022, West moved for a protective order requiring that all
 5 Defendants complete their inspection of the Feller Buncher by March 31, 2022. Dkt. 88.
 6 He also requested that (1) the data from the field inspection be shared with all parties
 7 within one week of the final inspection; (2) off-site laboratory testing be completed by
 8 April 18, 2022; (3) data from lab testing be provided to all parties within a week of the
 9 final test; (4) data be provided to West at no charge; (5) restoration of the Feller Buncher
 10 be completed by Defendants within one week after the final inspection; and (6)
 11 component parts removed from the Feller Buncher for off-site testing be replaced by the
 12 party requesting its removal. *Id.* at 8; Dkt. 103 at 5–6.

13 On March 21, 2022, the Court granted West's motion. Dkt. 105. Relevant to the
 14 instant motion, Defendant Tigercat Industries, Inc. objected to West's request to limit the
 15 dates of the off-site laboratory testing. *See* Dkt. 96 at 5–8. The Court concluded that the
 16 timeline, at the time, was supported by good cause and ordered off-site laboratory testing
 17 be completed by April 20, 2022. Dkt. 105 at 3–4.

18 On April 7, 2022, Defendants moved for their own protective order and to
 19 continue the pretrial deadlines and trial date by three months. Dkt. 113. They indicate that
 20 the inspection of the Feller Buncher did not go as planned and that additional lab testing
 21 is now required and cannot be feasibly completed by April 20, 2022. *See id.* at 7–10.
 22 They argue that, at a minimum, the Court should grant relief from the April 20 deadline

1 specified in the Court's March 21 Order and continue the expert disclosure and discovery
2 deadlines. Dkt. 120 at 4. West opposes the motion, arguing that Defendants' motion is an
3 untimely motion for reconsideration and that, if any relief is granted, it should be limited
4 to a one-month extension of the testing deadline and the expert and rebuttal expert
5 disclosure deadline. Dkt. 117.

6 A scheduling order "may be modified only for good cause and with the judge's
7 consent." Fed. R. Civ. P. 16(b)(4). The decision to modify a scheduling order is within
8 the broad discretion of the district court. *Johnson v. Mammoth Recreations, Inc.*, 975
9 F.2d 604, 607–08 (9th Cir. 1992). "Rule 16(b)'s 'good cause' standard primarily
10 considers the diligence of the party seeking the amendment." *Id.* at 609. If a party has
11 acted diligently yet still cannot reasonably meet the scheduling deadlines, the court may
12 allow modification of the schedule. *Id.* Local Civil Rule 16(m)(1) states that "this rule
13 will be strictly enforced" in order to "accomplish effective pretrial procedures and to
14 avoid wasting the time of the parties, counsel, and the court."

15 Additionally, Federal Rule of Civil Procedure 26(c) allows for a party to move for
16 a protective order to protect, for good cause, a party or person from "annoyance,
17 embarrassment, oppression, or undue burden or expense[.]" Fed. R. Civ. P. 26(c)(1). The
18 Rule permits a court to issue an order, *inter alia*, "specifying terms, including time and
19 place or the allocation of expenses, for the disclosure or discovery"; "prescribing a
20 discovery method other than the one selected by the party seeking discovery"; and
21 "forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery
22 to certain matters." *Id.* at (c)(1)(B)–(D).

Preliminarily, the Court does not agree with West that Defendants' motion is an untimely motion for reconsideration of the Court's March 21 Order. And even if it were to be construed as a motion for reconsideration, new facts have developed since the Court's March 21 Order, which would permit reconsideration. *See* W.D. Wash. LCR 7(h)(1) ("The court will ordinarily deny such motions in the absence of a showing of manifest error in the prior ruling or a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence.").

The Court finds good cause to grant relief from the April 20 testing deadline and to continue some of the pretrial deadlines. The parties appear to be in agreement that the April 20 testing deadline and the expert disclosure deadlines should be continued, and Defendants would be prejudiced if the other pretrial deadlines are not continued. Defendants have acted diligently in raising this issue to the Court, and the testing and pretrial deadlines cannot be met at no fault of any party. But there is no reason at this time why the trial date needs to be continued.

As such, Defendants' motion to continue and for a protective order, Dkt. 113, is **GRANTED** as follows:

- (1) Off-site laboratory testing shall be completed by June 20, 2022;
- (2) Data from lab testing shall be provided to all parties within one week of the final test;
- (3) Expert Witness Disclosures/Reports under Rule 26(a)(2) are due by August 1, 2022;
- (4) Rebuttal Expert Witness Disclosures/Reports are due by August 29, 2022;

- (5) Discovery motions are due by July 25, 2022;
- (6) Discovery shall be completed by August 22, 2022; and
- (7) Dispositive motions are due by September 30, 2022.

IT IS SO ORDERED.

Dated this 19th day of April, 2022.


BENJAMIN H. SETTLE
United States District Judge